

HOUSE BILL NO. 412

INTRODUCED BY D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MONTANA MOTOR HOME, FIFTH WHEELER, AND TRAVEL TRAILER LEMON LAW ACT; PROVIDING REMEDIES FOR CONSUMERS WHO PURCHASE MOTOR HOMES, FIFTH WHEELERS, OR TRAVEL TRAILERS THAT CANNOT BE MADE TO CONFORM TO THE MANUFACTURER'S WARRANTY; AND PROVIDING AFFIRMATIVE DEFENSES FOR THE MANUFACTURER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Motor Home, Fifth Wheeler, and Travel Trailer Lemon Law Act".

NEW SECTION. Section 2. Scope. [Sections 1 through 4] apply to all components of a motor home, fifth wheeler, or travel trailer, including but not limited to chassis, drivetrains, and components used for cooking, refrigeration, bathroom facilities, self-contained heating and air conditioning, water supply, and electrical and power systems.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Consumer" means any person who purchases for personal use a motor home, fifth wheeler, or travel trailer, other than for resale, to which a warranty applies.

(2) "Fifth wheeler" means a caravan-style trailer that attaches to a position directly above the tow vehicle's rear axle and is designed to provide temporary living quarters.

(3) "Motor home" has the meaning provided in 61-1-130.

(4) "Reasonable allowance for consumer's use" means an amount directly attributable to the use of a motor home, fifth wheeler, or travel trailer prior to the first report by a consumer of nonconformity to the dealer, manufacturer, or manufacturer's agent and any subsequent period when the motor home, fifth wheeler, or travel trailer is not out of service because of repair.

(5) "Travel trailer" has the meaning provided in 61-1-131 and does not include a fifth wheeler.

(6) "Warranty" means a manufacturer's express written warranty.

NEW SECTION. Section 4. Failure to conform to warranty remedies -- defenses. (1) If a motor home, fifth wheeler, or travel trailer does not conform to all applicable provisions of the warranty and the consumer reports the nonconformity to the dealer, manufacturer, or manufacturer's agent within 2 years following the original delivery of the motor home, fifth wheeler, or travel trailer to the consumer, the dealer, manufacturer, or manufacturer's agent shall make repairs necessary to conform the motor home, fifth wheeler, or travel trailer to the applicable provisions of the warranty. The necessary repairs must be made even if the 2-year period has expired after the consumer's report of the nonconformity.

(2) (a) If the dealer, manufacturer, or manufacturer's agent is unable to make the motor home, fifth wheeler, or travel trailer conform to the applicable provisions of the warranty by repairing or correcting any defect or condition that substantially impairs the use and fair market value of the motor home, fifth wheeler, or travel trailer to the consumer after a reasonable number of attempts, the manufacturer shall:

(i) replace the motor home, fifth wheeler, or travel trailer with a new or comparable motor home, fifth wheeler, or travel trailer of the same type and similarly equipped; or

(ii) accept return of the motor home, fifth wheeler, or travel trailer and refund to the consumer and any lienholder of record the full purchase price, including all collateral charges less a reasonable allowance for consumer's use.

(b) For the purposes of subsection (2)(a), "a reasonable number of attempts" to conform a motor home, fifth wheeler, or travel trailer to the applicable provisions of the warranty means that within 2 years following the original delivery of the motor home, fifth wheeler, or travel trailer to the consumer:

(i) the same nonconformity has been subject to repair more than three times by the dealer, manufacturer, or manufacturer's agent and the same nonconformity continues to exist; or

(ii) the motor home, fifth wheeler, or travel trailer is out of service because of repair for a cumulative total of 30 business days.

(3) A consumer may not proceed under this section if the consumer has failed to exhaust the consumer's remedies under a manufacturer's informal dispute settlement procedure if a procedure exists and is in compliance with federal and state law.

(4) (a) A consumer injured by a violation of this section may bring a civil action to enforce this section

1 and may recover reasonable attorney fees from the manufacturer who issued the warranty if the consumer
2 prevails in the action.

3 (b) This section may not be construed to limit the rights or remedies of a consumer under any other
4 statute.

5 (5) A manufacturer may assert as an affirmative defense to any claim brought under this section that:

6 (a) an alleged nonconformity does not impair the use and fair market value of the motor home, fifth
7 wheeler, or travel trailer; or

8 (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modification or alteration
9 of the motor home, fifth wheeler, or travel trailer by the consumer.

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11 NEW SECTION. **Section 5. Codification instruction.** [Sections 1 through 4] are intended to be
12 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections
13 1 through 4].

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